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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/618,135

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Andrew M. Rudoff

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EXAMINER

HARPER, LEON JONATHAN

ART UNIT

PAPER NUMBER

2166

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/618,135	Applicant(s) RUDOFF, ANDREW M.	
	Examiner Leon J. Harper	Art Unit 2166	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 58, 59, 63, 64 and 68-78 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 58, 59, 63, 64, 68-70, 72, 73, 75 and 76 is/are rejected.
- 7) ☐ Claim(s) 71, 74 and 77 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/19/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment filed 5/10/2006 has been entered. Claims 58,63,68 have been amended, claims 70-78 have been added and no claims have been cancelled or withdrawn. Accordingly, claims 58,59,63,64 and 68-78 are currently pending in this office action.

Claim Rejections - 35 USC § 102

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 58,59,63,64, 68-70,72,73,75,76,78 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6553391 (hereinafter Goldring)(Art of record).

As for claim 58, Goldring discloses: receiving a request to modify said current file (See column 5 lines 2-4); creating a new file wherein said new file is a replica of said current file and wherein said new file is associated with a file descriptor (See column 6 lines 12-13); modifying said new file in response to said request to modify said current file (See column 6 lines 12-14 and column 5 lines 34-36), wherein said new file is only accessible by an entity that sent said request to modify said current file (See column 6 lines 60-65); and linking said file descriptor to said file name, such that said new tile replaces said current file (column 6 lines 15-19).

As for claim 59 Goldring discloses: wherein, prior to linking said file descriptor to said file name, said current file continues to be capable of being accessed (See column 6 lines 15-19 note: old version is still accessible until the reference is changed).

Claims 63 and 64 are apparatus claims corresponding to the method claims 58 and 59 respectively and are thus rejected for the same reasons set forth in the rejection of claims 58 and 59.

Claims 68 and 69 are computer readable method claims corresponding to the method claims 58 and 59 respectively and are thus rejected for the same reasons set forth in the rejection of claims 58 and 59.

As for claim 70, the rejection of claim 58 is incorporated, and further Goldring discloses: wherein said file descriptor that is associated with said new file is a new file descriptor (See column 6 lines 13-15); said current file is associated with a current file descriptor (See column 6 lines 13 –15 note: if the name already exist then the current file is associated with it) ; and linking said file descriptor to said file name such that said new file replaces said current file, further comprises: linking said new file descriptor to said file name, such that said new file descriptor replaces said current file descriptor and said new file replaces said current file (See column 6 lines 15-19).

As for claim 72, the rejection of claim 58 is incorporated and further Goldring discloses: wherein an operating system receives the request to modify said current file, creates said new file, modifies said new file, and links said file descriptor to said file name (See column 6 lines 5-20).

Claims 73 and 75 are apparatus claims corresponding to the method claims 70 and 72 respectively and are thus rejected for the same reasons set forth in the rejection of claims 70 and 72.

Claims 76 and 78 are computer readable method claims corresponding to the method claims 70 and 72 respectively and are thus rejected for the same reasons set forth in the rejection of claims 70 and 72.

Response to Arguments

Applicant's arguments filed 5/10/2006 have been fully considered but they are not persuasive.

Applicant Argues:

Claim 58 features replacing the current file with the new file by linking the file descriptor (that is associated with the new file) to the file name (that is associated with the current file. Note that Claim 58 does not feature a file name of the new file, nor does Claim 58 feature a file descriptor of the current file. Also, note that by using the different terms "file descriptor" and file name," the Applicant is distinguishing one from the other, and thus a file descriptor" is not the same as a file name," or vice versa. The Applicant notes that while the description for the present Application refers to a file identifier" that may be either a file descriptor or a file name see, e.g., Application, page 13, lines 16-18), that in Claim 58, the specific terms file descriptor" and "file name" are used.

Examiner responds:

Examiner is not persuaded. During patent examination, the pending claims must be 'given the broadest reasonable interpretation consistent with the specification.' Applicant always has the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be

interpreted more broadly than is justified. In re Prater, 162 USPQ 541,550-51 (CCPA 1969). In this case a file descriptor is the same as a file name since they are both used to identify a given file, therefore is reasonable to equate a file descriptor with a file name. In fact the Application page 13 lines 16- 18 explicitly state " A new identifier for the new file is linked to the original identifier that was associated with the new file in block 310. For example, the file identifier that was associated with the new file in block 310 **may be a file descriptor and the new identifier that is linked here in block may be a new file name.**" Claim language given its broadest reasonable interpretation consistent with this claim language finds file descriptor and file name as interchangeable terms.

Applicant argues:

Finally, Claims 72,75, and 78 each feature the incorporation of "an operating system" that performs the functions of claims 72, 75, and 78, yet in Goldring it is the DBMS, such as DBMS 20, that employs the replication logic described therein, not an operating system. In fact a reading of Goldring and an electronic search of Goldring shows that an "operating system" is never mentioned.

Examiner Responds

Examiner is not persuaded. Operating systems provide a high level interface for applications to interact with hardware. To make a call to the operating system is just to use one of the interface functions to manipulate the hardware. Goldring column 4 lines 30-40 state "Having described the overall architecture of the system it is to be

understood that the various file system, DBMS, and user programs can reside on one or more computers. One or more computers can be a server computer made by IBM. Other digital processors however may be used, such as personal computers, laptop computers, mainframe computers, palmtop computers, personal assistants”.

Moreover, Reference is made to MPEP 2144.01 - Implicit Disclosure

“[I]n considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.” In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968) Subsequent to an analysis of the claims it was revealed that a number of limitations recited in the claims belong in the prior art and thus encompassed and/or implicitly disclosed in the reference (s) applied and cited. It is logical for the examiner to focus on the limitations that are “crux of the invention” and not involve a lot of energy and time for the things that are not central to the invention, but peripheral. The examiner is aware of the duties to address each and every element of claims, however, it is also important that a person prosecuting a patent application before the Office or an stakeholders of patent granting process make effort to understand the level of one of ordinary skill in the (data processing) art or the level one of skilled in the (data processing) art, as encompassed by the applied and cited references. The administrative convenience derived from such cooperation between the attorneys and examiners benefits the Office as well the patentee.

Allowable Subject Matter

Claim 71 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 74 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 77 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leon J. Harper whose telephone number is 571-272-0759. The examiner can normally be reached on 7:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain T. Alam can be reached on 571-272-3978. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2166

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LJH
Leon J. Harper
July 21, 2006


MOHAMMAD ALI
PRIMARY EXAMINER